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Date: August 23, 2004
To: Examiner J. Foreman
USPTO, Art Unit 3736
Facsimile No. 1-703-872-9306
From: Danna S. Pasternak
Re: USSN 09/882,363 (Atty Dkt. 6750-0007/SU98-U01.US2)
Message: Please see attached.

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Total number of pages, including this cover sheet: 3

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Atty Docket No.: 6750-0007
USSN: 09/882,363
SU98-U01.US2
PATENT

CERTIFICATE OF FAX TRANSMISSION PURSUANT TO 37 CFR § 1.8

I hereby certify that this correspondence is being faxed to (103)872-9806 on August 23, 2004.

8/23/04
Date

Michelle Hobson
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of
ALEXANDER et al.

Serial No.: 09/882,363

Filed: June 15, 2001

Title: **ASSESSING THE CONDITION OF A JOINT
AND PREVENTING DAMAGE**

Examiner: J. Foreman

Art Unit: 3736

Confirmation No.: 6739

Customer No.: 36806

COMMUNICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants submit that the paper labeled "Prior Art Submission" submitted by an anonymous third party on August 13, 2004 in the above-referenced case is improper and should be destroyed.

The submission does not comply with the submission of references in pending applications, as set forth in 37 C.F.R. § 1.99. First, the submission is not made within two months of publication of the application, as required by 37 C.F.R. § 1.99(e). Furthermore, the references of the submission were previously submitted by Applicants in Information Disclosure Statements and have already been considered by the Office. Moreover, 37 C.F.R. § 1.99(d) makes it plain that a third-party submission "shall not include any explanation of the patents of publications, or any other information." Thus, the submission is not proper because it was not timely filed, is redundant and improperly characterizes both the references and Applicants'

Atty Docket No.: 6750-0007
USSN: 09/882,363
SU98-U01.US2
PATENT


arguments.

The remedy for an improper submission of references in a pending application is also clearly set forth in 37 C.F.R. § 1.99(d). The Office is to "dispose of any such explanation or information if included..." Therefore, the third-party submission of prior art made August 13, 2004 is improper and should be destroyed by the Office.

Should the Examiner have any further questions, Applicants request that the undersigned be contacted at (650) 493-3400.

Respectfully submitted,

Date: August 23, 2004

By: 
Dalma S. Pasternak
Registration No. 41,411
Attorney for Applicants

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